

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES MASON,

No. C 13-0592 EMC (pr)

Plaintiff,

v.

ORDERA. KESTER; *et al.*,Defendants.

Plaintiff, an inmate at the Correctional Training Facility in Soledad, commenced this action by filing a complaint in Monterey County Superior Court. Defendants removed the action to federal court because the complaint alleged claims for, among other things, violations of Plaintiff's rights under the First Amendment and Eighth Amendment to the U.S. Constitution and therefore presented a federal question. At the same time they removed the action to federal court, Defendants moved this Court to screen the complaint pursuant to 28 U.S.C. § 1915A and waived their right of reply pursuant to 42 U.S.C. § 1997e(g).

Plaintiff then filed a series of motions that have left the court unsure as to what Plaintiff's intentions are. He filed a "motion for leave to amend complaint" (Docket # 4), and a "supplemental notice of motion to include pages 17 and 19 in their entirety to amended complaint" (Docket # 6). The amended complaint and the supplemental pages thereto show an effort by Plaintiff to eliminate the federal question by removing references to the First Amendment in the heading for one claim and to the Eighth Amendment in the heading for another claim. Plaintiff also filed a "motion to strike defendant's notice of motion to screen, remove, waive, or any enlargement of time for defendants to reply to plaintiff's amended complaint" (Docket # 5), in which he further indicated

1 that he was attempting to eliminate the federal question. *See* Docket # 5, p. 2 (urging that his motion
2 to amend the complaint, “if granted, takes away defendants[‘] challenge to plaintiff’s complaint on
3 the Federal question, thus plaintiff will move the court to dismiss defendants[‘] notice of motion to
4 the court to screen, remove,” and waive the right of reply). However, after filing those three
5 documents showing his intent to delete the federal constitutional claims that gave this Court federal
6 question jurisdiction, Plaintiff then filed a “motion for return of filed caption” (Docket # 7) in which
7 he stated that he had received no response from the Court as to whether his earlier motions had been
8 filed and therefore moved “for a return of filed captions of plaintiff’s notice of motion to amend and
9 strike, and supplemental motion to include pages 17 and 19 to amended complaint.” Docket # 7, p.
10 2. The Court does not understand whether the “motion for return of filed caption” is simply a
11 request for a copy of the filed documents or is an effort to withdraw the earlier motions that were
12 trying to eliminate the federal question.

13 Plaintiff must clarify what he wants to do. If Plaintiff wants to dismiss the federal
14 constitutional claims so that his action can return to state court, he should file a request for dismissal
15 of the federal claims in which he states something to the effect of, “I voluntarily dismiss my federal
16 constitutional claims.” Alternatively, if Plaintiff does not want to dismiss the federal constitutional
17 claims, he should file a request to proceed with the federal claims in which he states something to
18 the effect of, “I do not want to dismiss my federal constitutional claims and wish to proceed with
19 their consideration in federal court.” No later than **May 24, 2013**, Plaintiff must file a request for
20 dismissal of the federal claims or a request to proceed with the federal claims.

21 If Plaintiff wants the Court to send him a copy of any document he sends for filing, he must
22 send with the court filing (a) a self-addressed stamped envelope, and (b) an extra copy of the
23 document sent for filing so the Clerk can stamp it and return it to him.

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1 The Order Setting Initial Case Management Conference and ADR Deadlines that was filed
2 on February 11, 2013 is **VACATED**. (Docket # 3.) That order was issued when the case was
3 initially set to be assigned to another judicial officer, and has deadlines and procedures that do not
4 apply to a prisoner civil rights action pending before the undersigned.

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6 IT IS SO ORDERED.

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8 Dated: May 9, 2013

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11 EDWARD M. CHEN
12 United States District Judge
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